

FILED

JAN 10 2006

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIAUNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re

FRANK WILLIAM RACKLEY and
LISA MICHELLE RACKLEY,

Debtors.

Case No. 05-24608-D-7

AMERICAN GENERAL
FINANCE, INC.,

Plaintiff,

v.

FRANK WILLIAM RACKLEY and
LISA MICHELLE RACKLEY,

Defendants.

Adv. Pro. No. 05-2269

Trial:
DATE: January 4, 2006
TIME: 1:00 p.m.
DEPT: CFINDINGS OF FACT AND CONCLUSIONS OF LAW

I. INTRODUCTION

On September 22, 2005, American General Finance, Inc. (the "Plaintiff") filed a First Amended Complaint Objecting to the Discharge of a Particular Debt ("Complaint"). The Complaint alleges that a certain obligation owed to the Plaintiff by Frank Rackley and Lisa Rackley (the "Defendants") is excepted from discharge under 11 U.S.C. section 523 asserting the obligation was incurred through the Defendants' fraud.

At this court's Status Conference before Judge Klein on November 8, 2005, counsel appeared on behalf of the Plaintiff,

1 and Lisa Rackley appeared on her own behalf. Lisa Rackley's
2 general denial on the record was deemed to be her answer to
3 the Complaint. At the Status Conference, a discovery schedule
4 was set, and the matter was set for trial.

5 Trial was conducted on January 4, 2006. At trial, the
6 court heard the testimony of the witnesses and the argument of
7 the parties. The court has also reviewed the documentary
8 evidence of record before making the findings of fact and
9 conclusions of law set forth below.

10 II. JURISDICTION

11 Jurisdiction exists under 28 U.S.C. section 1334. Venue
12 is proper under 28 U.S.C. section 1409(a). The District Court
13 has generally referred these matters to the Bankruptcy Court
14 for hearing pursuant to 28 U.S.C. section 157(a) and the
15 United States District Court, Eastern District of California
16 General Orders 182 and 223. This is a core proceeding within
17 the meaning of 28 U.S.C. section 157(b)(2)(I).

18 III. PARTIES

19 Justin Allen and Steven Marles appeared for the
20 Plaintiff. Lisa Rackley appeared on her own behalf and on
21 behalf of her husband, Frank Rackley.

22 IV. FINDINGS OF FACT

23 1. Jackie Williams testified at trial on behalf of the
24 Plaintiff. The court finds that while Mrs. Williams testimony
25 was credible, that a substantial portion of her testimony was
26 not based on personal knowledge.

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1 2. Lisa Rackley testified at trial. The court finds
2 that Ms. Rackley's testimony was credible, her recall was good
3 and based on personal knowledge.

4 3. In or about December 2004, the Plaintiff loaned money
5 to the Defendants to enable the Defendants to purchase certain
6 furniture from the Furniture Center in North Highlands,
7 California.

8 4. At the time the Defendants incurred the obligation to
9 the Plaintiff, Lisa Rackley was employed at Ken & John's Auto
10 and she had been so employed for 12 years.

11 5. At the time the Defendants incurred the obligation to
12 the Plaintiff, Frank Rackley was employed at Estates Services.

13 6. In or about January 2005, Lisa Rackley lost her job
14 at Ken & John's Auto.

15 7. Lisa Rackley's compensation from her employment was a
16 substantial portion of the Defendants' family income. The
17 loss of Lisa Rackley's employment was the primary cause for
18 the Defendants' failure to repay the obligation owed to the
19 Plaintiff.

20 8. As of April 20, 2005, the Defendants had not repaid
21 any part of the amount owed to the Plaintiff.

22 9. On April 20, 2005, the Plaintiffs filed a joint
23 voluntary petition for relief under chapter 7 of Title 11 of
24 the United States Code.

25 10. At the time the Defendants incurred their obligation
26 to the Plaintiff, they intended to repay the obligation, and
27 therefore they made no material misrepresentation to the

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1 Plaintiff in the process of incurring the obligation to the
2 Plaintiff.

3 V. CONCLUSIONS OF LAW

4 1. The Plaintiff, as the party seeking relief in this
5 adversary proceeding, bears the burden of proof and
6 persuasion.

7 2. To prevail in a proceeding under section 523 for
8 general fraud, the creditor must by a preponderance of the
9 evidence demonstrate all of the following five elements: (a)
10 misrepresentation, fraudulent omission, or deceptive conduct
11 by the debtor; (b) knowledge of the falsity or deceptiveness
12 of his or her statement or conduct; (c) an intent to deceive;
13 (d) justifiable reliance by the creditor on the debtor's
14 statement or conduct; and (e) damage to the creditor
15 proximately caused by its reliance on the debtor's statement
16 or conduct. In re Slyman, 234 F.3d 1081, 1085 (9th Cir. 2000)
17 (citations omitted).

18 3. In this case, the record does not contain convincing
19 evidence that there was by either of the Defendants a
20 misrepresentation, fraudulent omission, or deceptive conduct
21 by the debtor; or of an intent to deceive by either of the
22 Defendants.

23 VI. CONCLUSION

24 In light of the foregoing, the court will enter judgment
25 in favor of the Defendants, and the Plaintiff shall take
26 nothing by way of its complaint.

27 Dated: JAN 10 2006

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ROBERT S. BARDWIL
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

CERTIFICATE OF MAILING

The undersigned deputy clerk in the office of the United States Bankruptcy Court for the Eastern District of California hereby certifies that a copy of the document to which this certificate is attached was mailed today to the following entities listed at the address shown on the attached list or shown below.

Steven W. Marles
528 E Main St
Turlock, CA 95382

Frank William Rackley
6721 ADMIRAL AVE
FAIR OAKS, CA 95628

Lisa Michelle Rackley
6721 ADMIRAL AVE
FAIR OAKS, CA 95628

DATED: 1/11/06

By: 

Deputy Clerk

EDC 3-070 (New 4/21/00)